APPEAL NO. 010580

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 28, 2001. The hearing officer determined that the correct impairment rating (IR) to be assigned to the appellant (claimant) for his hip injury was 2%, with a date of maximum medical improvement (MMI) of October 1, 1998, in accordance with the report of the designated doctor.

The claimant appeals and questions the fact determinations made by the hearing officer. He points out that his own doctor changed the date of MMI. He argues that the designated doctor did not consult his medical records. The respondent (carrier) responds that the decision was correct and recites facts in its favor.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in determining that the claimant's IR was 2% and his date of MMI was October 1, 1998, in accordance with the designated doctor's report. The report of a Texas Workers' Compensation Commission-appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption, a "great weight," is more than a preponderance, which would be only greater than 50%. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992. As the hearing officer pointed out, the difference of opinion between the treating doctor and the designated doctor was the amount of range of motion deficiency. Her decision that this was not a "great weight" is sufficiently supported by the record.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly

unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge